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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,762	10/22/2003	Bo Runeman	018798-164	6021

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BUCHANAN, INGERSOLL & ROONEY PC  
POST OFFICE BOX 1404  
ALEXANDRIA, VA 22313-1404

EXAMINER
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OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

MAIL DATE	DELIVERY MODE
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07/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/689,762

Applicant(s)

RUNEMAN ET AL.

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18, 20-25, 27 and 29-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18, 20-25, 27, 29-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

***Response to Amendment***

1. Claims 1-18, 20-25, 27, 29-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al (5,763,332) in view of WO (01/13596).
2. Gordon et al disclose a cleansing article such as wet-like wipe for personal cleansing (col. 1, lines 20-25), said article comprises a hydrophobic layer material which is a film formed of polyethylene or polypropylene. One surface of hydrophobic layer is treated with an emulsion. The other side of the layer is attached to the substrate. A second hydrophilic layer located on the emulsion layer to form a hydrophilic substrate (col. 4, line 63-65 and col. 5, lines 10-30, see figures 4 and 6). Gordon et al teach that numerous material are deposited on the hydrophobic substrate such as silicones and paraffins (col. 7, lines 22-40) and the internal phase emulsion comprises waxy lipids such as petrolatum (col. 12, lines 62); cleansing materials such as anionic, nonionic and cationic surfactants (col. 17, lines 45-65); and electrolytes including calcium chloride (col. 14, lines 20-24).
3. Gordon et al lack a specific teaching of lactobacillus plantarum.
4. WO '956 discloses a composition suitable for personal wipes (page 32, lines 17-26) comprising a lactic acid producing bacteria such as lactobacillus plantarum (page 12, line 30).
5. It would have been obvious to one of ordinary skill in the art to include the lactic acid producing bacteria to the wipes of Gordon et al because WO '956 teaches that said bacteria to aid in inhibiting the growth of bacterium, yeast, fungi and viruses (see abstract). Moreover, with respect to the water activity, the examiner asserts that said

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activity would have been inherent to the lactobacillus plantarum of WO '956 because said lactobacillus would comprise this characteristic. With further respect to the colon forming units, Gordon et al teach applicant's lipids that are capable of forming said CFU as claimed. Therefore, one of ordinary skill in the art would have been motivated to include said lactic acid producing bacteria as an antimicrobial agent in said cleansing wipe products, in the absence of a showing to the contrary.

Claims 21, 23, 29-30, 33-34, 39 and 41 rejected under 35 U.S.C. 103(a) as being unpatentable over Koenig (203/0224034) are withdrawn.

### ***Response to Arguments***

6. Applicant's arguments filed 4-11-2007 have been fully considered but they are not persuasive.

Applicant argues that the combination of Gordon et al and WO '956 has failed to suggest first and second parts are separate in different parts of said tissue.

The examiner contends that Gordon et al disclose two separate layers divided by a barrier layer and said layers comprise an emulsion phase with a cleansing component (see column 17, lines 45-65) and any additional component such as an antimicrobial agent lactic acid bacteria would produce two different *parts* on separate layers divided by barrier as claimed.

Applicant argues that Gordon et al or WO '956 are related to a two-step cleansing process.

The examiner contends that applicant's claims are directed to a cleansing tissue and not a process of cleansing.

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Applicant argues that one of ordinary skill in the art would not incorporate the emu oil of WO '956 into the high internal phase emulsion compositions of Gordon et al as the lipid.

The examiner contends and respectfully disagrees because Gordon et al teach the use of lipids such as petrolatum (col. 12, lines 60-62) and WO '956 is relied upon only for the inclusion of an antimicrobial component such as a lactic acid producing bacteria.

Applicant further argues that one of ordinary skill in the art reading Gordon would not be motivated to include a lactic acid producing bacteria in a high internal phase emulsion of Gordon.

The examiner contends that, in the absence of a showing to the contrary, it would have been prima facie obvious for a person of ordinary skill in the art reading Gordon et al to invite the inclusion of an antimicrobial lactic acid producing bacteria to aid in combating viruses and microbes as suggested by WO '956. Moreover, applicant's arguments are not substantiated by facts but instead are conclusory statements.

The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) ("An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of obviousness."). See MPEP § 716.01(c) for examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Nicholas Ogden  
Primary Examiner  
Art Unit 1751

No  
6-26-2007